

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 7-10, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Lechot (US 5,658,290).

Lechot discloses an instrument assembly for use in orthopedic surgery, comprising a component (1, figure 2) that is positionable within a body cavity to engage a bone, the component having an open end (figure 1) and at least one bar (2, figure 1) extending across the open end; and a manipulator (see figure below) having at least one clasp (see figure below) for engaging a portion of the bar so as to fasten the component to the manipulator, the clasp comprising; a plate (see figure below) having a plate surface (see figure below) and at least one hook (see figure below) extending away from the plate surface, the hook having a root (see figure below) wherein the hook connects with the plate surface, a free end (see figure below), an undersurface (see figure below), and a mouth (see figure below) defined between the free end and the plate surface, and wherein the distance between the undersurface of the hook and the plate surface decreases when measured from the free end to the root (see figure below); a collar (see figure below) having at least one pin (11, figure 2) extending upwardly therefrom; and a spring (9, figure 2) disposed between the collar and the

plate, the spring being configured to bias the collar toward the plate; and wherein the hook is configured, *i.e. capable*, such that, when the portion of the bar is disposed within the mouth and is moved relative to the plate from a first position (placed into the mouth), where the bar portion contacts the undersurface of the free end, to a second position toward the root (halfway between the free end and the root), the hook and pin are displaced relative to one another thereby enabling the portion of the bar to be moved to a third position between the root and the pin (directly abutting the root, furthest from the free end), wherein the manipulator has a longitudinal axis (see figure below), and the spring is configured to bias the collar toward the plate in a direction along the longitudinal axis (figure 2). The collar, the plate and the spring are configured such that, when assembled together, the distal end of the at least one pin is located between the surface of the plate and the component (figure 2), wherein the thickness of the at least one hook is thinner at the free end as compared to the thickness proximal the root (see figure below). The distance between the undersurface of the hook and the plate surface is approximately constant for the second portion (see figure below), and the undersurface of the second portion of the hook and the plate surface are approximately parallel (see figure below), wherein the distance between the undersurface at the root of the hook and the plate surface is approximately equal to the thickness of the portion of the bar (figure 2), and the distance between the root of the hook and the pin is slightly greater than the width of the portion of the bar (figure 2). The manipulator includes at least two clasps (figures 2-3) which are arranged rotationally symmetrically around a central point (see figure below), and the component includes corresponding bar

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portions, so that the bar portions (2, figure 2) can be positioned in corresponding clasps by relative rotation between the component and the manipulator around the central point.

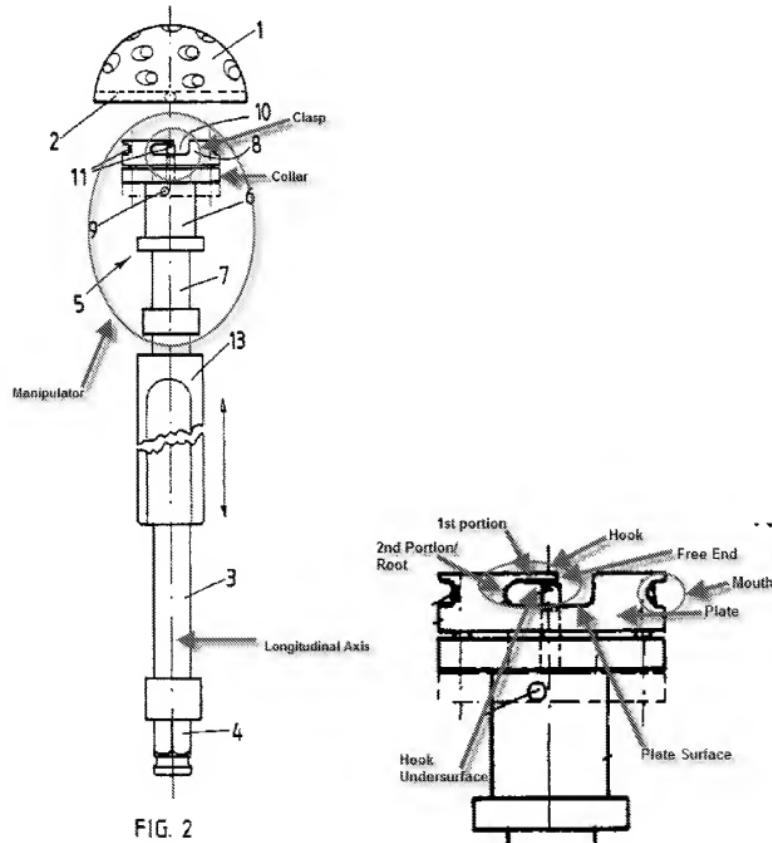
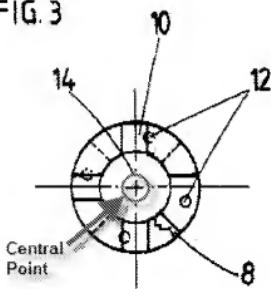


FIG. 3



Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lechot (US 5,658,290 in view of Weigand et al. (US 4,023,572).

Regarding claims 11-14, and 16-17 Lechot discloses the claimed invention except for the distance between the undersurface of the hook and the plate surface decreasing at a constant rate from the free end to the root, the rate forming an angle less than 40 degrees and at about 15 degrees.

Weigand discloses a hook (see figure below) having a first and second portions (see figure below), the undersurface of the hook and the plate surface decreasing at a constant rate (see figure below) from the free end (see figure below) to the root forming

an angle (A, figure 17, column 9, lines 58-64, column 10, lines 13-31). The angle being of small magnitude (column 10, lines 25-26) to effect the desired clamping without providing an angle that will cause the device to unintentionally loosen from engagement (column 10, lines 26-28).

Weigand discloses the claimed invention except for the angle is not more than 40 degrees and of about 15 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the angle of Weigand be about 15 degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

5. Applicant's arguments filed 4/22/2009 have been fully considered but they are not persuasive. The device of Lechot does disclose the further defined plate and at least one hook extending away from the plate surface having a free end and an undersurface as shown in the above figures, further the device of Lechot is configured, *i.e. capable*, of moving from a first position with the bar initially disposed within the mouth, to a second position wherein the bar is half-way between the root and the free end of the hook at the midpoint of the mouth, and to a third and final position wherein the bar is abutting the root and the furthest allowable distance from the free end/entry point of the mouth.

6. Applicant's arguments with respect to claims 11-14, and 16-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW LAWSON whose telephone number is (571)270-7375. The examiner can normally be reached on M-F, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. L./
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775